Secrt. IL.27—4

Local Judicial

(1936) Departm

1/- SERIES.

G.O. No. 805

DATED 3.3.1936

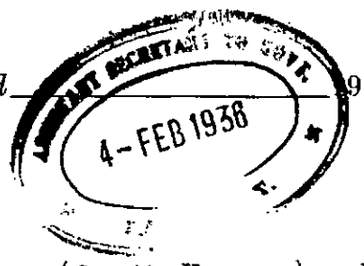
[Despatch Abstract.]

Suits - South Kanara - Mangalore Sub Court - O.S.No.27/34
amount collected from Mrs. Coses D'Sa Bai - Refund sanct

C.F. 31—13,206—14-12-35.

L a w (General) **DEPARTMENT.**

CURRENT No.

Received  19

Registered A.C.209 B 4.2.36 19

Subject.

S u i t s - (South Kanara) - Mangalore Sub Court - O.S.Nos.136/33 and 27/34 - Mortgage amount collected from Mrs.Coses D'Sa Bai - Refund ~~xxx~~ - Sanction -

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Endt.A---No.472/36,

Station M a d r a s, *Dated the* 3rd February 1936.

From A.R.C.Westlake, Esquire, I.C.S.,

Secretary,

Board of Revenue.

The Hon'ble Mr. E.F.Thomas, C.S.I., C.I.E., I.C.S., Commissioner of Land Revenue.

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Read the following paper:-

Letter from E.M.Gawne, Esquire, I.C.S., Collector of South Kanara, Ref.No.A-3-7354/28, dated the 24th January 1936.

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ENDORSEMENT.

Submitted to Government.

for S e c r e t a r y.

To the Secretary to Government, Law (General) Department with the duplicate copy of Collector's letter in original and certified copies of decree and judgment.

Copy to the Collector of South Kanara.

:-:

c.n.n./3-2-1936.

3

C.F. 30.

LAW (GENERAL) DEPARTMENT.

Received ..... 19 *Registered* 19

Subject.

copy

Suits - Mangalore - Subordinate Court - O.S.Nos.136/33 and 27/34 - Refund of the mortgage money collected by Government from Mrs. Coses D'Sa Bai - sanction requested.

(V)

Reference:- G.O.No.3840 Ms., dated 3.12.1935.

ENCLOSURES.
No. .....
.....
Spare copies .....

Ref.A3. No.7354/28.

Station Mangalore, *Dated the* 24th January 1936.

From (Name) E. M. Gawne, Esquire, I.C.S.,

(Designation) Collector of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department,
Madras.

Through the Secretary,
Board of Revenue, Madras.

Sir,

By an interlocutory application, the two sets of claimants were made parties in all the four suits and they compromised matters among themselves. The Subordinate Judge has accordingly passed a decree in terms of the ------ compromise petition, filed by the two sets of plaintiffs. The amount due to the deceased on the mortgage deed executed by the late Paul Andrew D'Sa has been decreed to be paid into Court on 12.6.1936 by the mortgagor's widow Mrs. Coses D'Sa Bai and the other defendants and the Government ------- (9th defendant) have been directed to pay to the 1st ------- defendant (Mrs. Coses D'Sa Bai) the amount of Rs.1278.11.6

A

C

collected by Government. The question of the payment by Government of the interest on this amount claimed by the 1st defendant has not been decided by the Court but has been "left open In the circumstances, it is presumed that all that can happen is a separate suit against Government for the interest amount and I doubt if this will ever be filed. The Court might as well therefore have found that no interest was due during the time that the Government had custody of the money. I, therefore, request that the Government may be pleased to sanction the payment of the amount of Rs.1278.11.6 collected from Mrs. Coses D'Sa Bai, after making provision for it in the re-appropriation account.

2. I enclose the certified copies of the judgment and the decree passed by the Subordinate Judge for ------- reference. They were received from the Government ------ Pleader, Mangalore only on 21.1.1936. As the time of two months allowed by the Court for the payment of the amount will expire on 17.2.1936, Irequest that orders passed may be communicated to me before that date.

Your obedient servant,

Collector.

24/1/36

Law (General) Dept.

C.No.709-B From the Board of Rev., Endt.No.A.472/36 d. 3.9.36

Suits- South Kanara- Mangalore Sub-Court- O.S.Nos. 136/33 and 27/34- Mortgage amount collected from Mrs.Coses D'Sa Bai- Sanction for refund.

A.S.

In G.O.No.4918 L.G. d. 29.11.30, orders were passed declaring the properties of the deceased Draupadi Amma of Panjikal in the South Kanara district, who died intestate, escheated to Govt. In pursuance of this order, sanction was accorded in G.O.No.3728 L.G. d.12.10.32 for the institution of suits for the recovery of the amounts due by the persons noted in the margin on mortgage deeds executed by them in favour of the deceased Draupadi Amma Suits were accordingly instituted in O.S.Nos. 123/32 and 23/34 on the file of the Sub Court, Mangalore.

(1) Achutha Pai and others
(2) Seshagiri Rao & others

2. The amount due to the deceased Draupadi Amma by the deceased Paul Andrew D'Sa was collected from his widow Mrs.Coses D'Sa Bai by the Collector as detailed below:-

Date of payment	Principal Rs	A	P	Interest Rs	A	P	Total Rs	A	P
28. 9. 31	...			632	8	0	632	8	0
19. 5. 32	449	7	6	50	8	6	500	0	0
19.12. 32	120	8	6	25	11	0	146	3	6
Total	570	0	0	708	11	6	1278	11	6

As the amount had been recovered in full, there was no need to file a suit for its recovery.

3. Subsequently, suits were filed by claimants to the deceased's (Draupadi Amma) property for the recovery of the amount due to her by the mortgagors or their legal representatives impleading the Govt also as a co-defendant. The Govt sanctioned the defence of the suits. As it was later reported that that the Govt would not succeed in the escheat and the local Govt Pleader recommended compromise, the Govt accepted the Collr's proposal and issued orders accordingly.

4. In G.O.No.2924 L.G. d. 11.9.35, orders were passed permitting the withdrawal of the suits filed by the Govt referred to in para 2 ~~on the previous page~~ as it was reported that the attempts at compromise had failed and that the withdrawal would be desirable in view of the fact that the Govt had already dropped the idea of contesting the suits in which they had been impleaded as a co-defendant.

5. In his letter No.A3-7354/28 d. 27.11.35, the Collr of South Kanara reported that the suits filed by Govt were withdrawn in pursuance of the orders issued in ~~kkx~~ G.O. No.2924 L.G. d. 11.9.35, and that Mrs.D.Coses D'Sa Bai from whom the amount of Rs.1,278-11-6, as detailed in para 2 on the previous page was recovered, claimed its refund together with interest @ 12½ %. The Collector held that the lady was not entitled to any interest on the amount and recommended that the refund could be deferred until the suits in O.S.Nos.27/34 in which the lady was impleaded as a co-defendant along with the Govt was disposed of. This proposal was accepted in G.O.No.3840 L.G. d.3.12.35.

6. The Collr now reports that the suit has been compromised.

Attention is invited to para 13 of the certified copy of the judgment by which the 9th defdt (The Secretary of State for India in Council represented by the Collr of South Kanara) is directed to pay to the first defendant Coses D'Sa Bai the amount of Rs.1,278-11-6. ~~xxxx

Though the time allowed in the judgment for payment expired on 17.2.36, it is submitted that under ~~the provisions of~~ section ~~86~~ 82(2) of the Code of Civil Procedure, execution shall not be issued on any decree against the Secretary of State for India in Council unless itremained unsatisfied for a period of three ~~xxxxxx~~ months computed from the date of the report of the court which passed the decree referred to in sub-section (1) thereof, i.e., after 17.2.36 Mrs. Coses D'Sa Bai has been ordered to deposit the ~~xxx~~ amount, which is to be refunded to her by Govt into Court on 12.6.36.

7. In regard to the ~~xxxxxx~~ Collr's suggestion that provision should be made for the grant of refund of Rs.1278-11-6 in the re-appropriation account, it is submitted that an amount of Rs.96,000/- was allotted under "~~X~~Refunds -Non-voted" under the head of 'Administration of Justice' which is under the control of the High Court. Even if the entire amount cannot be met from the balance available with the High Court, the deficit could be met by Govt by re-appropriation.

8. There is thus no objection to the grant of refund of Rs.1278-11-6 from out of the allotment in the current year. A draft order is submitted.

9. May be sent to Finance for acceptance.

Rev. in general and Rev dept

ASSTT. SECRETARY TO GOVT. 22 FEB 1936 REVENUE DEPARTMENT

DEPUTY SECRETARY TO GOVT. 22.2.36 25 FEB

Finance

Rev dept

Finance

4.

The draft order may be accepted.
and the case returned to Law (Genl)
W.O.

M
26.2.36

Through B.E.II
H (Para 2 of the draft order)
26/2

Hy.
27.2.36

25th Feb was the latest
date by which applications for
additional appropriations could
be received in Finance The
last 3 lines of para 2 of
draft should therefore be
omitted

GS
27.2.36

S

W.

HH/28/2

Law.

Hy.

With reference to the above ...
has been amended

Yours etc
for Secretary
Treasury
28/2/36

Forwarded
issued

ASSISTANT SECRETARY TO CAB
29 FEB 1936
LAW DEPT.

W.
27.2.36
A.G. 1430/3
25.2.36

8/
2.3.36
JW
Y3

S

Issued
2/3/36

1H
3/7

C.F.16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

Law (General) Department

SUBJECT:—

Suits- South Kanara- Mangalore Sub-Court O.S.No.27/34- Mortgage amount collected from Mrs.Coses D'Sa Bai- Refund sanctioned

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO*:—

No.709-B From the Board of Rev., Endt.No. A.472/36 dated 3. 2. 19 36. CF

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

Order / ~~Resolution~~ Ms. / ~~Rout.~~ No. 805, dated 3 - 3 - 19 36.

P3CF.

to Mrs.Coses D'Sa Bai, 1st Defdt. in O.S.No.27/34 on the file of the Sub-Court Mangalore in ~~pursuance of~~ according to the decree of the court d. ~~-~~.12.35

(C)

In the circumstances reported by the Collector of South Kanara, the ~~to Mrs. Coses D'Sa Bai, 1st defendant~~ Government sanction the re-fund of Rs.1278-11-6 (Rupees one thousand two hundred and seventy eight, annas eleven and pies six) being the amount collected and credited to Govt from her/as detailed below:-

Date of payment	Principal			Interest			Total		
	Rs	A	P	Rs	A	P	Rs	A	P
28. 9. 31				632	8	0	632	8	0
19. 5. 32	449	7	6	50	8	6	500	0	0
19. 12. 32	120	8	6	25	11	0	146	3	6
Total	570	0	0	708	11	6	1278	11	6

2. The Hon'ble the Judges of the High Court are requested to meet the expenditure from the ~~sanctioned~~ appropriation under 'XVII Administration of Justice-h.Refunds-Non-voted".

~~They are requested to apply to Govt if an additional appropriation is required to meet the expenditure.~~

Fair draft sent.

Ene. Regd.
Dpd. by

Added after Consultn with Fin Budget Sect

6. 3. 1936

To the Board of Rev
" Collr., South Kanara (with file)
" Hon'ble the C.J. with C.L.(a/c)
" A.G. through Fin. (a/c)
" Finance Dept.

8/3/36
9/3
2.3.36